



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via Facsimile & First Class Mail

202-373-6473

310-907-2025

JAN 12 2012

James Hamilton, Esq.
Bingham McCutchen LLP
2020 K Street, NW
Washington, DC 20006-1806

RE: MUR 6465
The Arizona Sports Foundation,
dba The Fiesta Bowl

Dear Mr. Hamilton:

By letter dated April 8, 2011, the Federal Election Commission ("Commission") notified your client, The Arizona Sports Foundation, dba The Fiesta Bowl (the "Fiesta Bowl"), of a complaint alleging that the Fiesta Bowl violated the Federal Election Campaign Act of 1971, as amended ("the Act"), and provided a copy of the complaint.

After reviewing the complaint and your response, the Commission found reason to believe, on December 13, 2011, that the Fiesta Bowl knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determinations.

Please note that the Fiesta Bowl has a legal obligation to preserve all documents, records and materials relating to this matter until notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

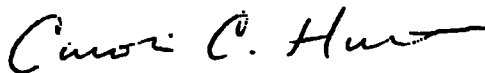
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James Hamilton, Esq.
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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. You may submit a written request for relevant information gathered by the Commission in the course of its investigation of this matter. *See* Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 Fed. Reg. 34986 (June 15, 2011).

We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

cc: Nathan Hochman, Esq.
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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENT: The Arizona Sports Foundation, dba The Fiesta Bowl MUR 6465

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7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission by
9 Melanie Sloan, alleging violations of the Federal Election Campaign Act of 1971, as amended
10 ("the Act"), by The Arizona Sports Foundation, dba The Fiesta Bowl ("Fiesta Bowl").

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. Factual Background**

13 The Fiesta Bowl is registered as a non-profit corporation in Arizona and is organized
14 under section 501(c)(3) of the Internal Revenue Code. The Fiesta Bowl states that through its
15 creation and sponsorship of the Festival of College Football – which includes numerous Arizona
16 events such as the annual Tostitos Fiesta Bowl and the Insight Bowl college football games – it
17 "promote[s] volunteerism, athletic achievement and higher education."
18 <http://www.fiestabowl.org/index.php/fiestabowl/about>.

19 In mid-December 2009, following an article in THE ARIZONA REPUBLIC reporting that
20 Fiesta Bowl employees may have been reimbursed for political contributions, the Fiesta Bowl
21 retained outside counsel to conduct an investigation (the "First Investigation"). See Craig Harris,
22 *Fiesta Bowl Employees Say Bowl Repaid Political Contributions*, THE ARIZONA REPUBLIC,
23 December 18, 2009. After interviewing several employees, counsel reported to the Board of
24 Directors that there was no credible evidence to support the reimbursement allegations. In
25 October 2010, after receiving information from a Fiesta Bowl employee contradicting the First
26 Investigation's findings, the Chairman of the Board of Directors of the Fiesta Bowl formed a

1 Special Committee to re-investigate the reimbursement allegations and to examine the First
2 Investigation. The Special Committee retained another law firm and empowered it with full
3 authority to investigate all potential violations of internal policies, state laws, and federal laws
4 (the "Second Investigation"). The Second Investigation included interviews with 52 individuals
5 and the review of over 10,000 pages of documents, and culminated in a 276-page Final Report of
6 Counsel to the Special Committee of the Board of Directors of the Fiesta Bowl ("Final Report").
7 On March 21, 2011, the Fiesta Bowl released a public version of the Final Report, minus all
8 attachments and source materials (e.g., interview statements). *See*
9 http://www.fiestabowl.org/_documents/reports/Fiesta_Bowl_Final_Public.pdf.

10 The Final Report concluded that since 2000, the Fiesta Bowl has used corporate funds to
11 reimburse 21 individuals for at least \$46,539 in local, state, and federal campaign contributions.
12 The Final Report also concluded that the Fiesta Bowl may have hosted fundraising events for
13 federal and nonfederal candidates on its premises without charge.

14 Relying on information in the Final Report, the complaint alleges that the Fiesta Bowl
15 and 13 individuals (1) violated 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(1)(i) by "reimbursing
16 employees for contributions made to federal candidates and committees," and (2) violated
17 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a) and (f) by "reimbursing employees and others with
18 corporate funds for contributions made to federal candidates and committees and by using
19 corporate resources and facilities to raise funds for federal candidates and committees."

20 Complaint at 6-7. The complaint provides a list of the federal contributions it asserts were
21 reimbursed by the Fiesta Bowl after January 1, 2006. *Id.* at 5-6.

22 Based on a review of the Final Report, the response to the complaint, the Commission's
23 electronic contributor search index, and other information, there appear to be four additional

1 post-January 2006 contributions and three pre-2006 contributions to federal committees that,
2 while not listed in the complaint, appear to have been reimbursed by the Fiesta Bowl. In sum,
3 there appear to be 29 federal contributions at issue, totaling \$30,400.

4 Regarding the allegation of corporate facilitation, the complaint states that the Final
5 Report found that the Fiesta Bowl used corporate resources and facilities to host a fundraising
6 event for former Arizona Congressman J.D. Hayworth on or about October 18, 2006. Complaint
7 at 6. In addition, based on "information and belief," the complaint alleges that the Fiesta Bowl
8 used corporate resources to organize a fundraising event for Straight Talk America (Senator John
9 McCain's leadership PAC) on or about April 28, 2006, and two fundraising events for Senator
10 McCain on or about March 8, 2007, and March 28, 2008. *Id.*

11 The Fiesta Bowl acknowledges that it reimbursed employees who made federal
12 contributions and that it used its facilities and resources for candidate fundraising activity, *see*
13 Fiesta Bowl Response at 2-3, but contends that the participation of its current employees in the
14 misconduct "was at the direction of others, and they acted without knowledge of its
15 impropriety." *Id.* at 3. The response emphasizes that the Fiesta Bowl leadership involved in the
16 violations is no longer employed by the Fiesta Bowl, including former president and CEO John
17 Junker, former COO Natalie Wisneski, and former Senior Vice President of Marketing Jay
18 Fields. *Id.* The response further states that the Fiesta Bowl sent letters requesting refunds of
19 improperly reimbursed contributions to the recipient campaigns, and notes that the Fiesta Bowl
20 has reformed its internal reimbursement practices to ensure that such activity does not reoccur in
21 the future. *Id.* at 6. In addition, the Board of the Fiesta Bowl states it "self-reported the Special
22 Committee's findings to the Arizona Attorney General's Office and the Internal Revenue

1 Service.” *Id.* at 1. The response requests that the Commission either dismiss or conciliate the
2 matter.

3 **B. How the Fiesta Bowl Reimbursed Contributions**

4 The Special Committee’s Final Report contains a detailed account of how the
5 contributions at issue were solicited and reimbursed, based primarily on interviews with Fiesta
6 Bowl employees who served as conduits for the contributions. Anthony Aguilar, Director of
7 Community and Corporate Relations, stated that contributions were typically requested by
8 Junker, Wisneski, and former Fiesta Bowl consultant Gary Husk. Final Report at 35. Kelly
9 Keogh, who served as Executive Manager for Junker during the period at issue, stated that an
10 email request saying “we need to get so many checks” sometimes would be sent from Husk’s
11 office to Wisneski, Junker, and/or Aguilar, and then a copy of the email would be sent “to the
12 rest of us.” *Id.* Some employees were reluctant to contribute. For example, Peggy Eyanson,
13 Director of Business Operations, stated that she first refused to make a \$1,000 contribution at the
14 request of Wisneski’s assistant Monica Simental, but made the contribution only after being
15 promised reimbursement. *Id.* at 36.

16 The primary means of reimbursing contributors appears to have been through so-called
17 “bonus” checks handed out by Wisneski at Junker’s direction. *Id.* at 37.

18 He [Junker] would just say “I need contributions. We need contributions
19 to Friends of [U.S. Senator] Jon Kyl,” or, “the check needs to be made out
20 to Friends of,” whoever, like [Arizona State Senator] Russell Pearce.
21 Later, he started using the term bonus and would say “Did you bonus staff
22 out?” . . . “John would say, ‘Did you bonus staff out and did you put some
23 other staff members in there – put [Director of Sales] Erika [Pumphrey] in
24 there,’ – people that didn’t contribute – to cover it. Sometimes he would
25 be pretty rude and adamant and tell me, “Bonus the staff,” because I
26 wasn’t doing it and people must have been telling him that they weren’t
27 getting their reimbursements. It would be like a constant pounding on me
28 to bonus the staff and I knew he was only talking about the ones that were
29 getting the campaign reimbursements.

1
2 *Id.* at 39.

3 According to Wisneski, Junker asked her to come up with "pretextual reasons" for the
4 bonuses, but that she had a difficult time doing so. *Id.* Wisneski stated, for example, that Junker
5 instructed her to simultaneously give bonuses to individuals who had not contributed in order to
6 disguise the purpose of the reimbursements.

7 Eyanson stated that the checks were written from a manual checkbook that was typically
8 used for non-payroll items such as paying bills from independent contractors. *Id.* at 38. She and
9 others stated that the reimbursement amounts were usually "grossed up" to account for state and
10 federal taxes. *Id.* at 40. The checks were usually signed by Wisneski after Eyanson filled out the
11 date, amount, and payee information. *Id.* Eyanson, Keogh, and former officer Shawn Schoeffler
12 stated that some of the contributions for which they were reimbursed were made in the names of
13 their spouses. *Id.* at 42. Although the Final Report contains few details as to how the payments
14 were documented as bonuses, it includes copies of checks and spreadsheets on which the word
15 "Bonus" was written by hand in the "checkbook memo" space.¹ *Id.* at 41, 57, 61, 62, 144.

16 In addition to individual bonus checks, another means of reimbursement included giving
17 a single employee a large bonus check from which that employee could then reimburse other
18 employees for their contributions. Wisneski recalled that, in or around 2003, former CFO Stan
19 Laybourne said to her: "How this is going to work is I'm going to be paid a bonus, like \$10,000
20 or \$15,000, and then I'm going to pay all of you back." *Id.* at 43. The Final Report includes a
21 copy of a \$15,000 check in the manual check register made out to Laybourne dated January 12,
22 2005. *Id.* at 45. Eyanson stated that she believed the check may have been for contribution
23 reimbursements based on handwritten figures on the check stub, which Eyanson thought could

¹ In some cases, there appear to have been no checkbook notations for the reimbursement checks. *Id.* at 42.

1 be reimbursement amounts. *Id.* at 44. Wisneski stated that after Laybourne was given the
2 \$15,000 bonus check, she and Junker contacted Husk to see if Wisneski could also receive a
3 "bonus" that she could use to reimburse other employees for their campaign contributions. *Id.* at
4 49. According to Wisneski, Husk replied, "Yeah, it's done all the time." *Id.* Wisneski said she
5 then received a \$5,000 check for the purpose of reimbursing other contributors. Husk, for his
6 part, denied that he ever told anyone that the Fiesta Bowl could make reimbursements for
7 campaign contributions, and he specifically denied that he spoke to Junker and Wisneski about
8 whether Wisneski could receive a bonus that should be used to fund the reimbursements of other
9 employees. *Id.* at 49-50.

10 Eyanson, however, stated that Wisneski told her in late 2006 that Anthony Aguilar was to
11 receive a \$15,000 bonus in order to reimburse contributors in cash. *Id.* at 46. Aguilar confirmed
12 that he received a \$15,000 check in October 2006 for "reimbursement purposes." *Id.* at 47. His
13 bank records show that he withdrew \$6,484 a few days after depositing the check, which he
14 recalled using to reimburse contributors, but he could not recall whether he gave out cash or
15 wrote personal checks. *Id.* Aguilar said it was possible he gave some of the money to former
16 Fiesta Bowl officers Fields or Schoeffler for further distribution. *Id.* at 48.

17 Some individuals interviewed during the Second Investigation stated that not all of the
18 reimbursements were made in the form of "bonus" checks. Schoeffler stated that he was
19 sometimes reimbursed through bonus checks, and at other times through an expense check. *Id.*
20 at 50. For example, on June 30, 2009, Schoeffler contributed \$1,000 to Senator McCain's
21 campaign and then received a \$4,000 check on August 25, 2009. Schoeffler stated that \$3,000 of
22 this amount was to be used as a down payment on a car, and the remaining \$1,000 was a
23 reimbursement for his contribution to the McCain campaign. *Id.*

1 Many of the federal reimbursements acknowledged by the Fiesta Bowl were for
2 contributions made by Junker and his wife. According to Wisneski, in early 2007, before Junker
3 was to receive a \$20,000 bonus, he showed her a list of campaign contributions that he and his
4 wife had made and for which they needed to be reimbursed. Final Report at 58. Wisneski said
5 she was upset about Junker's request, but that she asked Eyanson for the amount Junker would
6 receive if the \$20,000 was grossed up to cover taxes. Wisneski recalled that the increased
7 amount, \$11,948.88, approximated the sum of the contributions on Junker's list, so she instructed
8 Eyanson to cut a bonus check to Junker in the amount of \$31,948.88 (\$20,000 + \$11,948.88).
9 The Final Report notes that the total of all federal and nonfederal contributions Junker and his
10 wife gave from 2000 through the date of the check (February 26, 2007) was \$11,302. *Id.*

11 Wisneski reported that Junker also complained about not being reimbursed for \$2,100
12 that he and his wife each contributed to Senator McCain's campaign on March 8, 2007.
13 Wisneski said she felt uncomfortable but told Eyanson to write a check; Junker then received a
14 \$4,200 bonus check that Eyanson identified as a likely reimbursement. *Id.* at 59-60. The check
15 register contains the letters "MC" in Eyanson's handwriting, which Eyanson believes stood for
16 "McCain." *Id.* at 60.

17 Junker agreed to be interviewed during the Second Investigation, but refused to answer
18 any questions about the alleged reimbursements. *Id.* at 8. The Final Report does not explain
19 why Junker refused to provide answers; it states only that the Board of Directors placed him on
20 administrative leave after he failed to comply with the Board's written directives to "answer all
21 [of counsel's] questions" *Id.*

22 The Final Report does not provide any excerpts of interviews or instances in which those
23 involved in the reimbursements admitted they knew such conduct was illegal; rather, the

1 reimbursed contributors appear to have said during the Second Investigation that they lacked
2 such knowledge until they read the December 2009 article in THE ARIZONA REPUBLIC, which
3 alleged that Fiesta Bowl employees were reimbursed for political contributions and that such
4 activity could violate state and federal laws. *Id.* at 51-52.

5 C. Legal Analysis

6 A corporation is prohibited from making contributions in connection with any election of
7 any candidate for federal office. *See* 2 U.S.C. § 441b(a). The Act also provides that no person
8 shall make a contribution in the name of another person or knowingly permit his or her name to
9 be used to effect such a contribution. 2 U.S.C. § 441f.

10 A contribution made in the name of another results when the source of a contribution
11 solicits a conduit to transmit funds to a campaign in the conduit's name, subject to the source's
12 promise to advance or reimburse the funds to the conduit. *See U.S. v. O'Donnell*, 608 F.3d 546,
13 549 (9th Cir. 2010). And it is hornbook law that a principal is liable for the acts of its agents
14 committed within the scope of his or her employment. RESTATEMENT (THIRD) OF AGENCY
15 § 7.07; *U.S. v. Sun-Diamond Growers of California*, 138 F.3d 961(D.C. Cir. 1998) (criminal
16 convictions affirmed against Sun-Diamond in connection with a corporate contribution
17 reimbursement scheme carried out by officer).

18 The Act prescribes additional penalties for violations that are knowing and willful. *See*
19 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge
20 that one is violating the law. *Federal Election Commission v. John A. Dramezi for Congress*
21 *Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be
22 established "by proof that the defendant acted deliberately and with knowledge that the
23 representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Evidence

1 does not have to show that the defendant had specific knowledge of the regulations; an inference
2 of knowing and willful conduct may be drawn from the defendant's scheme to disguise the
3 source of funds used in illegal activities. *Id.* at 213-15.

4 Based on the available information, the Fiesta Bowl appears to have knowingly and
5 willfully made corporate contributions to federal political committees in the names of others.

6 **1. The Fiesta Bowl Reimbursed Contributors with Corporate Funds**
7

8 The Fiesta Bowl admits that it reimbursed contributors with corporate funds and "concurs
9 in the findings of the Final Report." Fiesta Bowl Response at 3. The Fiesta Bowl acknowledges
10 that it reimbursed 27 federal contributions totaling \$28,400, as each of these contributions is
11 included in a spreadsheet of federal and nonfederal contributions – entitled "Political
12 Contributions Reimbursed by the Fiesta Bowl" – attached to the Fiesta Bowl's response to the
13 complaint. Fiesta Bowl Response at Tab 12 (as mentioned above, it appears that the total
14 amount of federal contributions the Fiesta Bowl reimbursed was \$30,400). Based on these
15 admissions, the Fiesta Bowl violated 2 U.S.C. §§ 441b(a) and 441f by reimbursing campaign
16 contributions with corporate funds.

17 The fact that the Fiesta Bowl, acting through its officers and other employees, disguised
18 the reimbursements principally as bonuses over the course of several years strongly suggests,
19 moreover, that it knew the reimbursements were unlawful and attempted to conceal them.²

20 The Fiesta Bowl's flawed First Investigation, during which witnesses appear to have been
21 carefully chosen and coached so as not to reveal the reimbursements, also suggests that its
22 conduct was knowing and willful. During the First Investigation, outside counsel selected by the

² In MUR 5818 (Fieger), the Commission found reason to believe that the respondents knowingly and willfully violated section 441f by reimbursing the contributions of employees in the form of bonuses. *See* First General Counsel's Report dated August 10, 2006 at 7, and Commission Certification dated September 19, 2006.

1 Fiesta Bowl relied on former Fiesta Bowl consultant Husk to set up the interviews. Final Report
2 at 82. During the screening for the interviews, four employees stated that they informed Husk
3 they were aware of contribution reimbursements, yet they were not interviewed in the First
4 Investigation. *Id.* at 83.

5 Eyanson said she told Husk that she had been reimbursed and that she was "not going to
6 lie under oath." *Id.* at 89. She said that Husk replied, "We are going to steer the investigation
7 another way and we are not going to let them talk to you." *Id.* Wisneski recalled being coached
8 by Husk with a list of interview questions: "We went through them. And I remember . . . I
9 gave an answer, and he said 'why don't you answer it this way.'" *Id.* at 84. Wisneski recalled
10 that Junker also participated in discussions about who should be interviewed during the First
11 Investigation, suggesting the names of individuals who had not been reimbursed. *Id.* at 85.
12 Kelly Keogh also indicated that Husk coached her prior to her interview. *Id.* at 86-87.

13 Although Husk denied these assertions, *id.* at 87-90, given the consistency of the contrary
14 accounts of several witnesses, it appears that Husk and Junker may have intentionally
15 manipulated the First Investigation to ensure that the Fiesta Bowl's reimbursement practices
16 would not be revealed and would instead be covered up.

17 In addition, in late 2009 and early 2010, after the Secretary of State for Arizona requested
18 information gathered in the First Investigation, it appears that Fiesta Bowl employees falsified
19 documents so as to prevent State officials from uncovering the scheme. The Final Report states,
20 for example, that the Fiesta Bowl provided the Secretary of State with an incomplete spreadsheet
21 of contributions, bonuses, and expenses reimbursements. *Id.* at 132. Wisneski stated that Husk
22 and Junker were both "relieved" that the spreadsheet did not include Junker's 2007 "bonus" of

1 \$4,200 that she and Eyanson alleged was a reimbursement for the Junkers' two \$2,100
2 contributions. *Id.* at 142.

3 Therefore, there is reason to believe that The Arizona Sports Foundation, dba The Fiesta
4 Bowl, knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

5 **2. Corporate Resources Alleged to Have Been Used to Facilitate**
6 **the Making of Federal Contributions**
7

8 A corporation, including its officers, directors, or other representatives acting as agents of
9 the corporation, may not facilitate the making of a contribution by using its corporate resources
10 to engage in fundraising activities for any federal election. *See* 2 U.S.C. § 441b(a); 11 C.F.R.
11 § 114.2(f)(1). Officials or employees of a corporation are prohibited from ordering or directing
12 subordinates or support staff to plan, organize, or carry out fundraising projects as part of their
13 work responsibilities using corporate resources, without obtaining advance payment. 11 C.F.R.
14 § 114.2(f)(2)(i)(A). The Fiesta Bowl generally acknowledges that its resources and facilities
15 were used to support "a small number of candidate fundraising activities," as indicated in the
16 Final Report, but its response does not specifically address the four federal events alleged in the
17 complaint. Fiesta Bowl Response at 2, 3 and 7; Final Report at 183-186; Complaint at 6.

18 The Final Report states that the Fiesta Bowl has hosted political fundraisers on its
19 premises, that it has catered such events without reimbursement, and that its employees have
20 carried out fundraising activities as part of their normal work duties.³ Final Report at 183-86. It
21 is not clear, however, how many federal fundraising events the Fiesta Bowl hosted (if any), since
22 the Final Report appears to focus on events for nonfederal candidates. Instead, the Final Report

³ For example, it appears that Fiesta Bowl employees have coordinated invitation lists for these fundraisers and helped out during the events. Final Report at 183-186. Junker's assistant Kelly Keogh stated that she did the "majority" of the work for the events, for example, sending invitations by email. *Id.* at 185.

1 fundraiser, a possible event for then-Congressman J.D. Hayworth in or around October 2006.
2 The Final Report states only that Kelly Keogh was "attempting to schedule a fundraiser" for
3 Hayworth and provides no other information, including whether the event was actually held. As
4 to the three other alleged federal fundraisers in 2006, 2007, and 2008, the complaint provides no
5 supporting information, relying solely on "information and belief." Complaint at 6.⁴

6 For these reasons, the Commission dismisses the allegation that The Arizona Sports
7 Foundation, dba The Fiesta Bowl, violated 2 U.S.C. § 441b(a) by using corporate resources and
8 facilities to host fundraising events for federal candidates.

⁴ Further investigation of these allegations would jeopardize the Commission's ability to recover an appropriate penalty for Fiesta Bowl's acknowledged knowing and willful reimbursements of employee contributions, due to statute of limitations concerns.